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Attorneys for Defendants
UBER TECHNOLOGIES, INC. and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANT UBER
TECHNOLOGIES, INC.'S AND
OTTOMOTTO, LLC'S RESPONSE
TO COURT'S ORDER RE GROUND
RULES FOR TESTIMONY BY
ANTHONY LEVANDOWSKI (DKT.
1535)**

Judge: The Honorable William Alsup
Trial Date: October 10, 2017

1 Uber Technologies, Inc. and Ottomotto LLC (collectively, “Uber”) agrees to the
 2 procedures the Court identified in its Order Re Ground Rules for Testimony by Anthony
 3 Levandowski (Dkt. 1535). Uber writes separately only to clarify a few matters.

4 First, Uber agrees that “Neither side shall make any reference to Levandowski testifying
 5 at trial (or not) in its opening statement.” (Dkt. 1535, ¶ 1.) To clarify, Uber understands this to
 6 include that neither side should refer to Levandowski’s Fifth Amendment invocations at all in
 7 opening statement.

8 Second, Uber agrees with the Court’s procedure that ensures that Levandowski’s
 9 testimony occur at the end of each parties’ case-in-chief, as applicable, so that the Court may
 10 “assess whether or not the trial record before the jury includes corroborating evidence to support
 11 the adverse inferences sought.” (Dkt. 1535, ¶ 2.) Uber seeks guidance on the procedure that the
 12 Court envisions using to make that assessment. One proposal would be to require both parties to
 13 submit the questions that they intend to ask Levandowski 48 hours in advance of that testimony,
 14 with appropriate citations to evidence that is in the trial record. That way, the parties could move
 15 to strike any improper or unsupported questions before Levandowski’s testimony. This could be a
 16 sensible way to ensure that there is sufficient corroborating evidence for every inference sought.
 17 *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000); *Sun Microsystems,*
 18 *Inc. v. Hynix Semiconductor, Inc.*, 622 F. Supp. 2d 890, 907–08 (N.D. Cal. 2009).

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 21 Dated: September 25, 2017

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 24 By: /s/ Karen L. Dunn
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